

54-17-501 Waiver of requirement for solicitation or approval.

- (1) An affected electrical utility may obtain a waiver of the requirement that it conduct a solicitation process under Part 2, Solicitation Process, or the requirement that it obtain approval of a significant energy resource decision under Part 3, Resource Plans and Significant Energy Resource Approval, if the commission determines that waiving the requirement is in the public interest because there exists:
 - (a) a clear emergency;
 - (b) a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility; or
 - (c) any other factor that makes waiving the requirement in the public interest.
- (2) To obtain a finding from the commission under Subsection (1), the affected electrical utility shall, as soon as practicable after learning of the existence of a circumstance specified in Subsection (1):
 - (a) file a verified application with the commission; and
 - (b) serve an electronic and paper copy of the verified application, including all associated exhibits and attachments, on each person reflected on a list to be maintained and published by the commission on its Internet website that has requested service of waiver requests and has signed a generic protective order issued by the commission limiting the use of information contained in or attached to a waiver request.
- (3) A verified application filed pursuant to Subsection (2) shall:
 - (a) identify any waiver requested;
 - (b) explain the basis for each waiver requested;
 - (c) specify any time sensitivity associated with the verified application;
 - (d) explain why the waiver requested is in the public interest; and
 - (e) contain other information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) Upon receipt of a verified application filed under Subsection (2), the commission shall, before the end of the next business day, provide public notice of a technical conference to be held no sooner than three business days and no later than seven calendar days following the day on which the verified application is filed and served.
- (5)
 - (a) At the technical conference held under Subsection (4), the affected electrical utility shall provide adequate support for its verified application and shall respond to questions of the commission, an independent evaluator if one is participating, and any other interested person.
 - (b) The commission shall prepare and retain a transcript of the technical conference.
- (6) No less than three business days and no more than seven calendar days following the technical conference, the independent evaluator and any interested person may file and serve comments concerning the verified application.
- (7) The commission shall issue a written decision either granting, granting with conditions, or denying each waiver requested no later than seven calendar days following the deadline for the independent evaluator and any interested person to file comments under Subsection (6).
- (8)
 - (a) If confidential or trade secret information is provided or used in the verified application, in the technical conference, in comments filed on the verified application or otherwise in the process, that information shall be clearly identified by the providing person as confidential and shall be provided on a confidential basis subject to the terms of a protective order issued by the commission.
 - (b)

- (i) The commission shall issue a generic protective order to govern access to and use of confidential information in connection with a request for waiver under this part.
- (ii) Upon request by the affected electrical utility or any interested person, the commission may issue a supplemental protective order in connection with any verified application.
- (c)
 - (i) The generic protective order and any supplemental protective order restrict use of confidential information to the proceeding on the verified application, however, use of the confidential information in the proceeding is not considered a competitive purpose under Subsection (8)(c)(ii).
 - (ii) The generic protective order and any supplemental protective order shall forbid the use of confidential information for competitive purposes.
- (d) An interested person may gain access to and use confidential information in accordance with the terms of a protective order issued by the commission.
- (9) Notwithstanding the time frames in Subsections (4), (6), and (7), the commission:
 - (a) shall take action or schedule proceedings as soon as reasonably practicable in light of the circumstances and urgency demonstrated by the verified application and any subsequent information provided during the process; and
 - (b) may shorten or lengthen the time frames if the commission determines that changing them is warranted and in the public interest, except that a time frame may not be lengthened solely because an independent evaluator is not available to participate or to complete a recommendation.
- (10) If an affected electrical utility is granted a waiver to acquire or construct a significant energy resource in accordance with this section:
 - (a) the provisions of Sections 54-17-303 and 54-17-304 do not apply to the significant energy resource decision;
 - (b) any cost recovery that an affected electrical utility seeks in connection with that significant energy resource is subject to a future prudence review by the commission under Subsection 54-4-4(4); and
 - (c) the waiver grant does not create any presumption that the affected electrical utility's action in acquiring or constructing a significant energy resource was prudent.
- (11)
 - (a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to have an independent evaluator available to participate in any application for a waiver under this part.
 - (b) The commission may decline to use an independent evaluator in the consideration of a waiver application if the commission determines the use of an independent evaluator is:
 - (i) not appropriate under the circumstances;
 - (ii) not available under terms or conditions the commission considers reasonable; or
 - (iii) not available to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).
 - (c) The validity of an order entered under this part is not affected by:
 - (i) the unavailability of an independent evaluator; or
 - (ii) the failure of an independent evaluator to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).
- (12) The commission shall issue a generic protective order as provided in Subsections (2)(b) and (8)(b).
- (13) By September 1, 2007, the commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules concerning the process for obtaining a waiver of the solicitation or approval process consistent with this section.

Amended by Chapter 382, 2008 General Session